

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 517 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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AHMEDABAD MUNICIPAL CORPORATION

Versus

DIPAKLAL MADANLAL GUPTA

Appearance:

MR. YOGEN PUROHIT, for MR PRASHANT G DESAI
for Appellant.
MR PAWANKUMAR N for Respondent.

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

The original defendant of Civil Suit No. 6160 of 1998 which is still pending on the file of the City Civil Court, Ahmedabad, has preferred this present appeal under Sec.104 of the Civil Procedure Code read with Order 43 Rule 1(r) of the Civil Procedure Code, challenging the common order dt. 12th July, 1999 disposing of Notice of Motion Ex.5 and Ex.6 presented by the plaintiff in the aforesaid suit.

2. In this present appeal, the appellant is the defendant and the respondent is the plaintiff in the aforesaid suit, and therefore, the parties will be

referred to as the plaintiff and defendant respectively at appropriate places.

3. The facts leading to this present appeal, in a nutshell, are as follows :-

The plaintiff is in possession of the suit property described in Para 1 of the plaint. Originally, that suit property was of the ownership of one Chunilal Chhaganlal from whom the father of the plaintiff had taken that suit property on rental basis by father of plaintiff and since the life time of his father, business in the name and style of "Harihar Bhajiya House" is being carried on in that suit property. For this business, the defendant has issued a licence and same was being renewed from time to time for the effective period upto 30/9/1995. Thereafter, from 1996, the plaintiff has started to carry on business of photography in the name and style of "Dipak Studio". It is his case that he is in possession of the suit property since 1972.

4. The defendant issued a show cause notice under Sec.260(1) of the Bombay Provincial Municipal Corporations Act on 23/6/1998. The plaintiff appeared before the concerned Officer of the defendant Corporation on 3/7/1998. The plaintiff also submitted a written explanation on 2/7/1998. Thereafter, as per the case of the plaintiff, defendant authority passed a resolution without applying its mind and decided to remove the construction of the suit property. Such type of notice was given to the plaintiff on 13th August, 1998. Therefore, on 16/12/1998, the plaintiff filed the aforesaid suit being Regular Civil Suit No. 6160 of 1998 for decree of perpetual prohibitory injunction restraining the defendant from implementing the notice in exercise of the powers conferred on it under Sec.260 of the said Act.

5. On the same day, the plaintiff submitted Notice of Motion Ex.6 for an interim injunction. The learned Judge of the trial Court at the initial stage granted ad-interim relief in terms of Para 8(A) of the said application. Thereafter, after hearing the learned advocates for both the parties and after perusing the materials produced by both the parties, the learned Judge of the trial Court has been pleased to come to a conclusion that the plaintiff has got a prima facie case, and therefore, he passed an order dt. 12th July, 1999, whereby Notice of Motion has been allowed and the defendant has been restrained from implementing the final notice of demolition dt. 12th August, 1998, which has

served upon plaintiff on 13/8/1998.

6. Being aggrieved against and dissatisfied with the said order dt. 12/7/1999 below Ex.6, the original defendant has preferred this present appeal.

7. I have heard Shri Yogen Purohit, learned advocate for and on behalf of Shri Prashant G. Desai, learned advocate for the appellant and Shri Pavankumar N., learned advocate for the respondent.

8. On perusal of record of this appeal, it appears that this appeal has been admitted on 7th August, 2000 but as per order passed in Civil Application No. 12253 of 1999 on that day, this Court did not grant any interim relief to the appellant, and therefore, the order which is challenged in this appeal is still operative and effective even after about one year and three months.

9. I have heard the learned Advocates for both the parties, in detail at length. Looking to the facts and circumstances of this case and considering the rival contentions of both the parties and on going through the grounds stated in Memo of appeal, this Court is of the view that this appeal is required to be disposed of by giving suitable directions to the learned Judge of the trial Court.

10. The learned Judge of the trial Court is directed to dispose of Civil Suit No. 6160 of 1998 as early as possible, preferably within one year from the date of receipt of writ of this Judgment, by affording full opportunity of being heard to both the parties without being influenced by this order as well as impugned order which is challenged in this present appeal, in accordance with law. The parties are also directed to extend fullest co-operation to the learned Judge of the trial Court so as to enable him to dispose of the suit within aforesaid stipulated time granted. There shall be no order as to costs.

Date: 17/10/2000. (H.H.MEHTA,J.)

ccshah